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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Rules and Policies on Foreign Participation
in the U.S. Telecommunications Market

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IB Docket No. 97-142

**REPLY COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association ("USTA") respectfully replies to comments filed on July 9, 1997 in the above-captioned proceeding.¹

I. INTRODUCTION

None of the comments filed thus far in this proceeding dispute two key observations by the Commission: (a) that "the WTO Basic Telecom Agreement promises to alter fundamentally the competitive landscape for telecommunications services" (*NPRM* at para. 2), and (b) that an

¹ Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Order and Notice of Proposed Rulemaking*, IB Docket No. 97-142, FCC 97-195 (Rel. June 4, 1997) (*NPRM*).

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open entry policy for foreign-affiliated carriers "introduces new sources of competition, which will produce lower prices and greater service choice and innovation for American consumers" (*NPRM* at para. 5). First and foremost, USTA believes that the significant and beneficial changes in the U.S. telecommunications market which the Commission foresees as a result of the Agreement compel a reappraisal of the underlying basis for the entry barriers and regulation applicable to domestic carriers. In deciding when to permit the RBOCs to offer in-region interLATA services and when conducting biennial regulatory reviews and evaluating petitions for forbearance, the Commission should employ the same standards favoring entry and regulatory streamlining which it is proposing to use in this proceeding. Any additional rules which are necessary for the Commission to adopt in this proceeding should be simple, non-burdensome and effective.

II. THE COMMISSION SHOULD ENSURE EQUIVALENT OPPORTUNITIES FOR FOREIGN AND DOMESTIC COMPETITORS

The current rules and policies governing entry by the RBOCs into their respective in-region interLATA marketplace predate the Agreement. Under the Agreement, foreign companies will be allowed full access to all U.S. telecommunications markets while the RBOCs are still precluded from offering one-stop shopping in the U.S., and incumbent LECs now face the prospect of competition from large international carriers. In order to respond to this and other competition, it is more important than ever for all LECs to be allowed to offer a full complement of services with minimum regulation.

According to the NPRM, the requirements contained in the Agreement and the accompanying Reference Paper on Procompetitive Regulatory Principles “are essentially the same as the requirements of the Communications Act and the Telecommunications Act of 1996 that this Commission has implemented over the past 16 months” (*NPRM* at para. 24), yet the Commission is prepared to adopt rules of entry and post-entry regulation for foreign carriers which are vastly different from those governing domestic incumbent LECs. Specifically, the Commission is prepared to adopt a rebuttable presumption in favor of allowing large international carriers from WTO member countries to enter the U.S. market as soon as the Agreement takes effect, unless a petitioner can show that entry would pose a “very high risk to competition in the U.S. telecommunications market that could not be addressed by conditions that we could impose on authorization” (*NPRM* at para. 32), and to allow these carriers to operate under lighter post-entry regulation than what domestic LECs face.

The Commission justifies this new entry standard by noting that “foreign carriers with monopoly positions today should have far less market power as a result of the WTO commitments” (*NPRM* at para. 31). While USTA agrees with the Commission’s observation, it is equally true that the RBOCs already have far less market power as a result of the legally enforceable obligations they face under the 1996 Act. USTA agrees with BellSouth that “it would be irrational for the Commission to adopt a formal presumption in favor of foreign entry into U.S. markets based on the likelihood that foreign carriers’ home markets are technically open, while continuing to deny the Bell companies chance to enter the domestic interexchange market even

when they show their local markets are in fact open.”² The result of this double standard, as noted by SBC, “will tilt the playing field, because many large and well-financed foreign carriers will be given a “headstart” over the BOCs in entering the long distance markets.”³ The Commission fails to justify this unsupportable double standard. The correct approach is for the Commission to provide equivalent opportunities for foreign and domestic competitors by employing a similar presumption in favor of entry when it reviews applications under section 271 of the Communications Act.

The Commission should also work to ensure equivalent regulation by considering additional regulatory streamlining for domestic carriers. In particular, the Commission’s new “separate subsidiary” rule for the long distance operations of independent LECs should be eliminated. So far, the Commission as well as most of the commenters in this proceeding have not concluded that any foreign carrier should be subject to such a rule. At the same time, USTA has shown in CC Docket No. 96-149 that this rule makes no sense in any event.⁴ The Commission should withdraw the separate subsidiary rule for the long distance operations of independent LECs without delay.

² Comments of BellSouth at 3-4.

³ Comments of SBC at 7.

⁴ See Petition for Reconsideration of USTA, CC Docket No. 96-149 (filed Aug. 4, 1997).

III. TO THE EXTENT IT IS NECESSARY TO ADOPT NEW RULES IN THIS PROCEEDING, SUCH RULES SHOULD BE SIMPLE, NON-BURDENSOME AND EFFECTIVE

The Commission's implementation of the Agreement should be directed toward simple, non-burdensome and effective rules that allow foreign and domestic carriers to compete on an even footing and provide any safeguards that may be needed in the most streamlined fashion possible. Such an approach will better allow U.S. and other signatories to monitor the implementation of the Agreement, make it easier for all competitors to comply and will minimize disputes. To the extent that the Commission adopts new rules in this proceeding applicable to U.S. carriers covering the same subject matter contained in the Commission's current rules, such as in the Customer Proprietary Network Information (CPNI) context, it is absolutely vital that U.S. carriers should be able to satisfy overlapping requirements with one set of procedures.⁵

USTA finally emphasizes that the Reference Paper on Pro-Competitive Regulatory Principles negotiated as part of the Agreement is a statement of principles which clearly permits flexibility for signatories to establish individualized open market regimes. The Reference Paper does not endorse any particular regulatory regime. As noted by U S WEST and SBC, the U.S. model should not be construed as the only regulatory model that will satisfy the open entry and

⁵ See Comments of USTA at 5-6 (USTA does not believe that CPNI rules are necessary, and cautions that it would be counterproductive if such rules make it harder to provide one-stop shopping options, which most customers prefer, or to communicate with customers periodically about new products, services, or discounts that may benefit them, which most customers find acceptable).

pro-competition requirements of the Agreement and Reference Paper.⁶

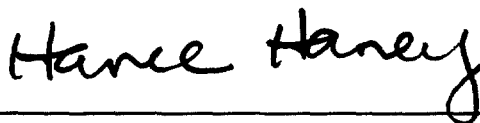
V. CONCLUSION

The Commission should take advantage of the opportunity afforded by the Agreement to initiate domestic reforms that will magnify the scope and scale of these benefits. Specifically, and for the reasons stated above, the Commission should promote open markets for all competitors, whether foreign or domestic, and undertake additional regulatory streamlining pursuant to its authority under the 1996 Act. Rules which are simple, non-burdensome and effective will best promote competition consistent with U.S. obligations under the agreement.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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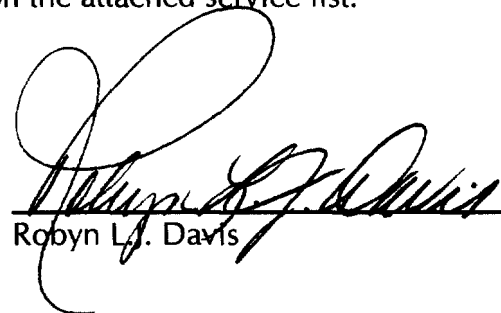
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⁶ See Comments of USTA at 3; Comments of U S WEST at 8-9; Comments of SBC at 4-5.

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on August 12, 1997 Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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